

# STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

DECISION

FOP/170350

## PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 05, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner.

There appeared at that time and place the following persons:

## PARTIES IN INTEREST:

Petitioner:



#### Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Dean Landvatter

Racine County Department of Human Services 1717 Taylor Ave Racine, WI 53403-2497

#### ADMINISTRATIVE LAW JUDGE:

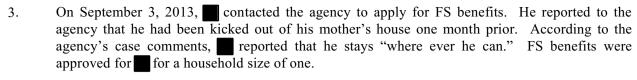
Debra Bursinger

Division of Hearings and Appeals

#### **FINDINGS OF FACT**

- 1. Petitioner (CARES # ) is a resident of Racine County.
- 2. Petitioner has a son Petitioner did not have an open benefits case with the agency at any time relevant to this matter. Petitioner resided for at least part of 2013 and 2014 at Racine.

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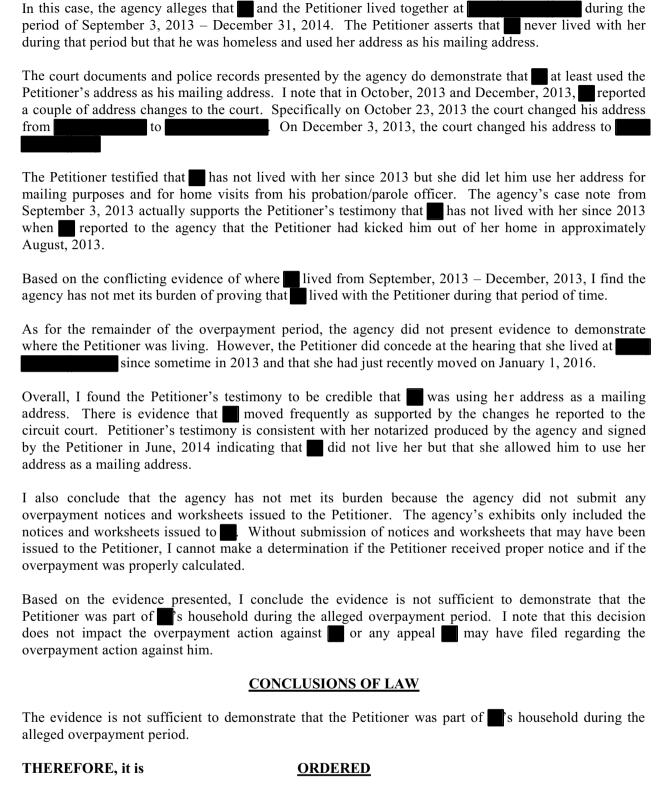
- 4. On September 18, 2013, Racine Police responded to a call involving Racine as his address.
- On October 23, 2013, in a matter in circuit court, reported a change in address to Racine. The court notes indicate that had previously reported an address on Racine.
- 6. On December 3, 2013, notified the court of an address change to
- 7. On April 16, 2014, applied for BC+ and reported his address as
- 8. On May 19 and 20, 2014, had contact with the Racine Police Department and reported his address as Racine.
- 9. On June 6, 2014, was charged in Racine County Circuit Court. He reported an address of Racine to the court.
- 10. On June 13, 2014, the Petitioner signed a notarized statement asserting that does not live with her, that he is homeless and that she allows him to use her address as a mailing address.
- On June 20, 2014, July 4, 2014, July 9, 2014, and October 1, 2014, had contacts with the Racine Police Department. On each occasion, he reported his address as Racine to the police.
- On November 5, 2014, a paternity action was filed with as a party. He reported his address as in Racine to the court.
- On June 25, 2015, obtained employment at Racine.
- 14. On November 5, 2015, the agency issued FS Overpayment Notices and worksheets to informing him of the agency's intent to recover an overissuance of FS benefits in the total amount of \$2,875 for the periods of September 3, 2013 August 31, 2014 and September 11, 2014 December 31, 2014.
- 15. The Petitioner filed an appeal with the Division of Hearings and Appeals on November 23, 2015.

#### **DISCUSSION**

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. Id.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

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That this matter is remanded to the agency to take all administrative steps necessary to rescind any overpayment claims and cease any collection actions against the Petitioner related to the allegations that she and lived together during the period of September, 2013 – December, 2014. These actions shall be completed as soon as possible but no later than 10 days from the date of this decision.

#### REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received** within 20 days after the date of this decision. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

#### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee, Wisconsin, this 21st day of January, 2016

\sDebra Bursinger Administrative Law Judge Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator Suite 201 5005 University Avenue Madison, WI 53705-5400 Telephone: (608) 266-3096 FAX: (608) 264-9885 email: DHAmail@wisconsin.gov Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on January 21, 2016.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability